Filed 6/28/16 Afremova v. City of Santa Monica CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ALLA AFREMOVA, Plaintiff and Appellant, v. CITY OF SANTA MONICA, Defendant and Respondent.	B258560 (Los Angeles County Super. Ct. No. SC119039)

APPEAL from a judgment of the Superior Court of Los Angeles County. Elia Weinbach, Judge. Affirmed.

Law Offices of Gregory B. Byberg and Gregory B. Byberg for Plaintiff and Appellant.

Marsha Jones Moutrie, City Attorney and Karen S. Duryea, Deputy City Attorney for Defendant and Respondent.

Alla Afremova (appellant) appeals from a final judgment entered after the trial court granted summary judgment against appellant and in favor of the City of Santa Monica (city) on appellant's claims against the city for personal injury and premises liability. The trial court granted summary judgment on the ground that the city had established a complete defense under Government Code section 831.4 (section 831.4), which provides immunity for any injury caused by condition of a trail which provides access to recreational or scenic areas (trail immunity). On appeal, appellant argues that the trial court erred in determining that the walkway on which she was injured was a trail within the meaning of section 831.4.

Appellant has failed to provide any evidence creating a triable issue of fact as to the purpose of the subject walkway. We therefore find that the path is a trail within the meaning of section 831.4, and affirm the judgment.

FACTUAL BACKGROUND

On June 27, 2012, at approximately 6:00 p.m., appellant was strolling north on the Santa Monica beach with her daughter, her daughter's husband and son. They observed a wooden walkway to the east, and proceeded to the walkway in order to walk on the nearby paved road towards the Ferris wheel at the Santa Monica Pier. Appellant's intention was to take the wooden walkway to the paved area in order to walk to the Pier. The wooden walkway and paved walkway are connected.[1]

Appellant did not make it across the wooden walkway to the paved road. While walking on the wooden plank, her foot caught on a raised plank which caused her to fall. Appellant sustained injuries.

PROCEDURAL HISTORY

On November 13, 2012, appellant filed a complaint against the city for premises liability and personal injury.

---

[1] Appellant's opening brief indicates that appellant's intention was to walk back to an automobile. However, appellant's deposition testimony, cited by appellant, shows that appellant's intention was to walk to the Ferris wheel.

On March 20, 2014, the city filed a motion for summary judgment. The city contended that appellant's action was barred under two different theories: trail immunity under section 831.4 and design immunity under Government Code section 830.6. In reference to its trail immunity argument, the city stated that the wooden walkway is used for recreational purposes including but not limited to walking and viewing the Pacific Ocean. In addition, it is used to provide access to many beach activities including water sports and bike riding.

Included with its motion the city offered evidence of the purpose of the wooden walkway. City council meeting notes from July 30, 1996, provided information regarding the Beach Improvement Group (BIG) project going on in the city at that time. These improvements included renovations in the beachfront area from the northern section of Palisades Park to the South Beach area. The notes state that "[w]hile each project contains uniquely distinct features, all five share common work elements, are contiguous to one another and constitute one encompassing scenic landscape from Bay Street to the northern City limits." One of the key improvements to the South Beach area was the walkway on which appellant tripped. It was described as follows: "A boardwalk extends to the high water line as a disabled access/pedestrian walkway." The improvements to the beachfront area, including the walkway at issue, were designed and created for the purpose of recreation. The city council notes state: "As it is the natural elements which create the 'drama' of Palisades Park, at South Beach, it is human theater. The beach and the Promenade ebb and flow with the rhythm of people and their activities -- volleyball, gymnastics, chess, skating, walking, bicycling. The recreational elements that already exist offer the opportunity to 'make' a site and become the framework for improvisation."

In support of its motion for summary judgment, the city cited *Carroll v. County of Los Angeles* (1997) 60 Cal.App.4th 606 (*Carroll*), among other cases. In *Carroll*, it was held that the South Bay Bicycle Path, a paved path running along the coast from Santa Monica to Redondo Beach used daily for walking, jogging, and other recreational activities, is a trail subject to governmental immunity under section 831.4. The city

pointed out that the paved path held to be a trail subject to immunity in *Carroll* is the same path that connects to the wooden walkway at issue in this case. The city argued that appellant was engaging in recreational activity when she used the walkway, and that the path itself is an integral part of the network of paved walkways and bike paths that exist along the beach for recreational use.

Appellant opposed the summary judgment motion, arguing that appellant and her family were not engaged in any sport or organized recreation on the day of the incident, and that the city cited no case where any court has found that a constructed wooden walkway is a trail for purposes of section 831.4. Appellant cited *Treweek v. City of Napa* (2000) 85 Cal.App.4th 221 (*Treweek*), which examined whether a boat ramp is a trail for the purposes of section 831.4. The *Treweek* court concluded that a boat ramp is not necessarily a trail, explaining, " a 'boat ramp' is a construction connecting the shore to a boat or a dock or connecting a dock to a boat where the things connected are or, due to tidal action, may be at different levels. A ramp is therefore designed and used for a different purpose than a path or trail." (*Id.* at p. 232.)

In its reply to appellant's opposition, the city distinguished *Treweek*, pointing out that the design and use of the wooden path where appellant tripped and fell was a pedestrian walkway, rather than a boat ramp. The city further cited *Montenegro v. City of Bradbury* (2013) 215 Cal.App.4th 924, 931 (*Montenegro*) to support its position that walking is considered a recreational activity for the purposes of section 831.4.

The summary judgment motion was heard on June 3, 2014. Both parties appeared. On June 8, 2014, the trial court filed its order granting summary judgment in favor of the city. The court found that the city met its burden of establishing that the area where appellant fell is governed by the provisions of section 831.4. The court reviewed the evidence and determined that "the subject wooden path connects the beach to the bike

path, rendering the subject wooden path integral to the design of the bike path."[2] The court noted that appellant did not meaningfully dispute these facts.[3]

Final judgment in the matter was entered on July 22, 2014. On August 27, 2014, appellant filed her notice of appeal.

DISCUSSION

I. Applicable law and standard of review

A. Summary judgment review

We review a grant of summary judgment de novo, deciding independently whether the facts not subject to triable dispute warrant judgment for the moving party as a matter of law. (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 253 (*Nazir*).) The appellate court's task is to make "'an independent assessment of the correctness of the trial court's ruling, applying the same legal standard as the trial court . . . .' [Citations.]" (*Brundage v. Hahn* (1997) 57 Cal.App.4th 228, 234-235.)

A defendant moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that the defendant is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) To meet this burden, the defendant must show that one or more elements of the cause of action cannot be established, or that a complete defense to the cause of action exists. (*Ibid.*)

Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. (Code Civ. Proc., § 437c, subd. (p)(2).) An issue of fact is created only

---

2 The trial court sustained the city's objections to certain photographs of the walkway that appellant attempted to enter into evidence. The city objected to the photographs on the ground that there was no attestation as to personal knowledge of who took the photographs, when they were taken or what they depict. Appellant does not appeal this evidentiary ruling, therefore we do not address it. Photographs of the path submitted by the city were considered by the court.

3 Because summary judgment was granted under the doctrine of trail immunity, the court declined to rule on the issue of whether the action was barred under the doctrine of design immunity. Because we affirm on the grounds of trail immunity, we also decline to address the evidence and arguments relating to design immunity.

by a conflict of evidence, not by speculation, conjecture, conclusory assertions or mere possibilities. (*Yuzon v. Collins* (2004) 116 Cal.App.4th 149, 166.)

B. Section 831.4

> "A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of:
>
> "(a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and which is not a (1) city street or highway or (2) county, state or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways.
>
> "(b) Any trail used for the above purposes.
>
> "(c) Any paved trail, walkway, path, or sidewalk on a easement of way which has been granted to a public entity, which easement provides access to any unimproved property, so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of any condition of the paved trail, walkway, path, or sidewalk which constitutes a hazard to health or safety. Warnings required by this subdivision shall only be required where pathways are paved, and such requirement shall not be construed to be a standard of care for any unpaved pathways or roads."

(§ 831.4)

"The trail immunity provided in [section 831.4,] subdivision (b) of the statute extends to trails that are used for the activities listed in subdivision (a), and to trails that are used solely for access to such activities. [Citation.]" (*Amberger-Warren v. City of Piedmont* (2006) 143 Cal.App.4th 1074, 1078 (*Amberger-Warren*).) "The immunity applies whether or not the trail is paved. [Citation.]" (*Ibid.*) "The plainly stated purpose of immunity for recreational activities on public land is to encourage public entities to open their property for public recreational use, because 'the burden and expense of putting such property in a safe condition and the expense of defending claims for injuries would probably cause many public entities to close such areas to public use.'

[Citations.]" (*Armenio v. County of San Mateo* (1994) 28 Cal.App.4th 413, 417 (*Armenio*).)

"The purpose for which a trail is used is ordinarily viewed as a factual issue, but it becomes a question of law if only one conclusion is possible. [Citation.]" (*Armenio, supra,* 28 Cal.App.4th at p. 418.)

II. The subject walkway is a trail subject to section 831.4

Appellant disputes the trial court's determination that the walkway on which she was injured is a trail subject to the provisions of section 831.4 as a matter of law.

Because the walkway at issue is not an unpaved road or a paved trail, the applicable subdivision of section 831.4 is subdivision (b), which protects the city from liability where an injury occurs on "[a]ny trail" which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas. (§ 831.4, subd. (a), (b).) "Whether a particular property is a trail under section 831.4, subdivision (b) will depend . . . on accepted definitions of the property, the purpose for which the property is used, and the purpose of the statute." (*Amberger-Warren, supra,* 143 Cal.App.4th at p. 1083.)

The city provided extensive evidence of the purpose and use of the property at issue. There was no dispute that the wooden walkway runs perpendicular to the South Bay Bicycle Path and Ocean Front Walk. The area surrounding the wooden walkway is known as the South Beach area of Santa Monica Beach. South Beach improvements included construction of the wooden boardwalk over the sand to provide beach access to pedestrians and the handicapped. The wooden boardwalk is used by walkers and runners to gain access to the beach to the west or to the network of paved bike and walking trails to the east.[4] The photographs which were admitted into evidence show a walkway

---

[4] Appellant did not dispute that the path is used by walkers and runners. However, appellant objected to the city's description of the property as for "recreational use" and claimed that this was "a statement of opinion not fact." Appellant did not attempt to provide any facts suggesting that the wooden walkway is for anything other than recreational use.

extending from a paved path out over the sand. A larger area at the end of the walkway allows for a view of the Pacific Ocean. All of this evidence shows a single purpose for the walkway: recreational use. There is no evidence in the record of any other purpose for the walkway.

Case law interpreting section 831.4 also supports the conclusion that the walkway is a trail subject to immunity under section 831.4. In *Carroll*, an individual suffered an injury when she was rollerblading on the South Bay Bicycle path, which connects to the walkway in question in this case.[5] The question on appeal was whether a paved bicycle path qualifies as a trail under the immunity provisions of section 831.4. (*Carroll, supra*, 60 Cal.App.4th at p. 607.) The Second Appellate District found that subdivision (b) of section 831.4 "obviously applies." (*Carroll*, at p. 609.) In response to the appellant's argument that the word "trail" does not apply to a paved bicycle path, the court disagreed, holding that "[t]he words 'trail' and 'path' are synonymous. [Citation.]" (*Ibid.*) In response to the appellant's argument that the path does not provide access to anything, the *Carroll* court once again disagreed, stating:

> "In the first place, it is obvious that the use of the Path would allow any user access to view the Pacific Ocean. We take judicial notice that the Pacific Ocean certainly qualifies as a 'scenic area' within [section 831.4,] subdivision (a). Next, three published cases have rejected appellant's argument, and have held that the immunity under subdivision (b) is not limited to 'access' trails, but extends to include a trail whose use itself is the object of the recreational activity. [Citations.]"

(*Carroll, supra*, 60 Cal.App.4th at pp. 609-610.)

As in *Carroll*, the path at issue here may be used for recreational activity such as walking and viewing the Pacific Ocean. In fact, it is connected to the path at issue in *Carroll*. There can be no question that the walkway is a trail as contemplated by section 831.4.

---

[5] The *Carroll* court explained, "[t]he South Bay Bicycle Path . . . stretches along the coast from Santa Monica through Redondo Beach." (*Carroll, supra*, 60 Cal.App.4th at p. 607.)

It makes no difference that the walkway at issue has a different surface than the paved bicycle path. As the court explained in *Armenio, supra,* 28 Cal.App.4th at page 418, "[section 831.4,] subdivision (b) refers to '[a]ny' trail. The logical inference of the all-encompassing 'any' in subdivision (b), particularly in relationship to the limiting adjectives in its sister subdivisions, is that the nature of the trail's surface is irrelevant to questions of immunity." Nor is the walkway's urban location of significance. As explained in *Montenegro, supra,* 215 Cal.App.4th at page 931, "section 831.4 applies to any trail or path specifically put aside and developed for recreational uses, without regard to its unnatural condition or urban location, and have consistently defined paved, multipurpose paths located in metropolitan areas as 'recreational trails' for purposes of section 831.4, subdivision (b) immunity. [Citations.]"[6] Under section 831.4, "'[t]he design and use will control what an object is, not the name.'" (*Amberger-Warren, supra*, 143 Cal.App.4th at p. 1080.) Here, the design and use of the walkway in question is to provide access to recreational activity and scenic views. It falls squarely under the provisions of section 831.4, subdivision (b).

Appellant relies heavily on *Treweek*. In *Treweek*, a woman sustained injuries when a portion of a city-owned boat dock ramp gave way. The trial court granted the city's motion for judgment on the pleadings on the ground that the city could not be held liable for injuries under the immunity set forth in section 831.4, subdivision (b). In determining that the boat ramp was not a trail as a matter of law, the Court of Appeal explained that "the fact that a structure provides access to a recreational area does not necessarily mean it is a 'trail' within the meaning of the statute." (*Treweek, supra,* 85 Cal.App.4th at pp. 229-230.) The court pointed out that the words "trail" and "ramp" are not synonyms and that trails and ramps are not designed or ordinarily used for the same

---

6 The plaintiff in *Montenegro* had argued that she was acting as an ordinary pedestrian seeking to avoid traffic at the time of the accident. Nevertheless, the pathway on which she was walking was defined by the court as a trail under section 831.4. The Court of Appeal determined that "[t]he fact that a trail has a dual use -- recreational and non-recreational -- does not undermine section 831.4, subdivision (b) immunity. [Citations.]" (*Montenegro, supra,* 215 Cal.App.4th at p. 932.)

purpose. (*Id.* at p. 230.) The court emphasized that it was "not determining that a boat ramp, bridge or other structure may never be within the immunity afforded under [section] 831.4." (*Id.* at p. 232.) The record before the court did not show that the boat ramp was part and parcel of any trail, and given the procedural posture of the case, the court was required to assume the opposite. (*Id.* at p. 233.) In addition, the court noted that the policy considerations supporting immunity did not come into play in the case. "Commercial as well as recreational users pass over the ramp and as it is used for both purposes, there may well be a financial incentive to keep the ramp open." (*Id.* at p. 234.)

Treweek is distinguishable from the present matter. As this case arises from the grant of a summary judgment motion rather than a motion for judgment on the pleadings, both parties have had the opportunity to present evidence regarding the use of the area surrounding the walkway and the purpose of the walkway itself. That evidence shows conclusively that the walkway falls within the protection of section 831.4. Appellant has failed to present any evidence creating a triable issue of fact as to the purpose of the walkway. Thus, the trial court did not err in determining that the walkway is a "trail" for the purposes of section 831.4, and summary judgment was appropriately granted.

III. No error in determining that the walkway is integral to a network of paths

Appellant takes issue with the trial court's reasoning in granting the summary judgment motion. Regardless of the trial court's reasoning, we may affirm the summary judgment if it is correct on any ground. (*Bunnell v. Department of Corrections* (1998) 64 Cal.App.4th 1360, 1367.) Nevertheless, we briefly address appellant's argument.

Appellant argues that the trial court did not make a finding that the subject walkway was a trail for the purposes of section 831.4 immunity, but instead held that it is a "path that is integral to a network of paths" and thus should be considered a trail under *Treweek, supra*, 85 Cal.App.4th at page 232. Appellant argues the passage that the trial court relied upon in *Treweek* is dicta.

The *Treweek* court stated:

> "It is important to note that we are not determining that a boat ramp, bridge or other structure may never be within the immunity afforded under

> section 831.4. City, which rests on the claim that the ramp in question is in and of itself a 'trail' within the meaning of section 831.4, does not alternatively argue that, even if it is not, the ramp is nonetheless within the immunity provided by that statute because it is an *integral part* of a 'trail.' As an abstract proposition such an argument might have merit, as the policy considerations militating in favor of immunity might well apply to a ramp, bridge or other construction that is fully integrated into the sort of 'trail' contemplated by the statute, and essential to the full use and enjoyment of that 'trail' by the public."

(*Treweek, supra*, 85 Cal.App.4th at p. 232.)

Appellant argues that the wooden walkway is not integral to the bike path, but is used by different people for different purposes. However, appellant has produced no evidence of any individuals using the walkway for any purpose other than recreation, access to the beach, or access to the surrounding recreational trails. In fact, appellant herself was walking on the beach when the accident occurred. Appellant stated her purpose for walking on the beach was to show her family "the beautiful view." She chose to walk on the walkway in order to more easily access a paved path to the Ferris wheel at the pier. Thus, the uncontradicted evidence shows that the walkway is for recreational purposes, and is part of the network of paths in the South Beach area of Santa Monica Beach. The trial court did not err in so holding.

The trial court's finding that the wooden walkway is integral to a network of paths is not essential to a finding that the walkway is a trail under section 831.4. The walkway is a trail under section 831.4 because it provides access to the beach and is used for recreational purposes such as walking and viewing the Pacific Ocean. Appellant has failed to create a triable issue of fact as to any other possible use or purpose for the wooden walkway on which she was injured. We affirm the trial court's ruling that it was a trail within the meaning of section 831.4, subdivision (b) as a matter of law.

DISPOSITION

The judgment is affirmed. The city is entitled to its costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST